

By Bosse

H B. No. 1194

A BILL TO BE ENTITLED

AN ACT

relating to the competence of an applicant for the issuance, renewal, extension, amendment, or transfer of a permit by the Texas Department of Health, the Texas Water Commission, or the Texas Air Control Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Sections 361.0881 and 361.0882 to read as follows:

Sec. 361.0881. COMPETENCE OF APPLICANT. (a) The department or commission may not issue, amend, renew, extend, or transfer a permit in its jurisdiction under this subchapter unless the department or commission determines that the applicant is competent to operate the facility for which the issuance, amendment, renewal, extension, or transfer of the permit is sought. In determining the applicant's competence, the department or commission shall consider any appropriate factors, including the applicant's:

(1) financial ability to properly conduct the activity involved;

(2) environmental compliance record, including compliance with this subchapter and any rules adopted or orders issued under this subchapter; and

(3) technical competence to operate the facility.

(b) To assist the department or commission in determining an

1 applicant's competence under this section, each applicant for the  
2 issuance, amendment, renewal, extension, or transfer of a permit  
3 under this subchapter must provide to the department or commission,  
4 as appropriate, the name and address of each person with an  
5 ownership interest of five percent or more in the facility for  
6 which the issuance, amendment, renewal, extension, or transfer of  
7 the permit is sought.

8 (c) If a hearing is held under Section 361.088 concerning  
9 the issuance, amendment, renewal, extension, or transfer of a  
10 permit, the department or commission shall include in that  
11 proceeding a determination of the applicant's competence as  
12 provided by this section.

13 Sec. 361.0882. TRANSFER OF PERMIT. (a) If there is a  
14 change of control in regard to a permitted facility or the holder  
15 of a permit, the permit holder must apply to the department or  
16 commission, as appropriate, for an authorization to transfer the  
17 permit. Unless the transfer is requested and approved within a  
18 time limit established by rule of the department or commission, the  
19 permit expires.

20 (b) In this section, "change of control" means a  
21 transaction, or series of transactions occurring within a one-year  
22 period, that results in a change in the persons holding 40 percent  
23 or more of:

24 (1) the voting securities of a corporation; or

25 (2) the ownership interest of another entity.

26 SECTION 2. Section 361.088(c), Health and Safety Code, is  
27 amended to read as follows:

1 (c) Before a permit is issued, amended, extended, or renewed  
2 or a transfer is approved under Section 361.0882, the agency to  
3 which the application is submitted shall provide an opportunity for  
4 a hearing to the applicant and persons affected. The agency may  
5 also hold a hearing on its own motion.

6 SECTION 3. Subchapter C, Chapter 382, Health and Safety  
7 Code, is amended by adding Sections 382.0561 and 382.0562 to read  
8 as follows:

9 Sec. 382.0561. COMPETENCE OF APPLICANT. (a) The board may  
10 not issue, amend, renew, or transfer a permit or special permit  
11 under this subchapter unless the board determines that the  
12 applicant is competent to operate the facility for which the  
13 issuance, amendment, renewal, or transfer of the permit or special  
14 permit is sought. In determining the applicant's competence, the  
15 board shall consider any appropriate factors, including the  
16 applicant's:

17 (1) financial ability to properly conduct the activity  
18 involved;

19 (2) environmental compliance record, including  
20 compliance with this subchapter and any rules adopted or orders  
21 issued under this subchapter; and

22 (3) technical competence to operate the facility.

23 (b) To assist the board in determining an applicant's  
24 competence under this section, each applicant for the issuance,  
25 amendment, renewal, or transfer of a permit or special permit under  
26 this subchapter must provide to the board the name and address of  
27 each person with an ownership interest of five percent or more in

1 the facility for which the issuance, amendment, renewal, or  
2 transfer of the permit or special permit is sought.

3 (c) If a hearing is held under Section 382.056 concerning  
4 the issuance, renewal, or transfer of a permit or special permit,  
5 the board shall include in that proceeding a determination of the  
6 applicant's competence as provided by this section.

7 Sec. 382.0562. TRANSFER OF PERMIT OR SPECIAL PERMIT. (a)  
8 If there is a change of control in regard to a permitted facility  
9 or the holder of a permit or special permit, the permit holder must  
10 apply to the board for an authorization to transfer the permit or  
11 special permit. Unless the transfer is requested and approved  
12 within a time limit established by rule of the board, the permit or  
13 special permit expires.

14 (b) In this section, "change of control" means a  
15 transaction, or series of transactions occurring within a one-year  
16 period, that results in a change in the persons holding 40 percent  
17 or more of:

18 (1) the voting securities of a corporation; or

19 (2) the ownership interest of another entity.

20 SECTION 4. Sections 382.056(a), (c), and (d), Health and  
21 Safety Code, are amended to read as follows:

22 (a) An applicant for a construction permit or special permit  
23 under Section 382.051, ~~[or]~~ a permit review under Section 382.055,  
24 or a transfer of a permit or special permit under Section 382.0562  
25 shall publish notice of intent to obtain the permit, ~~[or]~~ permit  
26 review, or transfer. The applicant shall publish the notice at  
27 least once in a newspaper of general circulation in the county in

1 which the facility is located or is proposed to be located. The  
2 board by rule shall prescribe when notice must be published and may  
3 require publication of additional notice.

4 (c) At the site of a facility or proposed facility for which  
5 a permit application, ~~[or]~~ permit review application, or  
6 application for the transfer of a permit or special permit is  
7 submitted, the applicant shall place a sign declaring the filing of  
8 an application for a permit, ~~[or]~~ permit review, or transfer of a  
9 permit or special permit for a facility at the site and stating the  
10 manner in which the board may be contacted for further information.  
11 The board shall adopt any rule necessary to carry out this  
12 subsection.

13 (d) The board or its delegate shall hold a public hearing on  
14 the permit application, ~~[or]~~ permit review application, or  
15 application for the transfer of a permit or special permit before  
16 granting the permit, ~~[or]~~ continuance, or transfer if a person who  
17 may be affected by the emissions, or a member of the legislature  
18 from the general area in which the facility or proposed facility is  
19 located, requests a hearing within the period set by board rule.  
20 The board is not required to hold a hearing if the basis of a  
21 request by a person who may be affected is determined to be  
22 unreasonable.

23 SECTION 5. Subchapter B, Chapter 26, Water Code, is amended  
24 by adding Sections 26.0284 and 26.0285 to read as follows:

25 Sec. 26.0284. COMPETENCE OF APPLICANT. (a) The commission  
26 may not issue, amend, renew, or transfer a permit under this  
27 subchapter unless the commission determines that the applicant is

1 competent to operate the sewer system, treatment facility, or  
2 disposal system from which waste is to be discharged under the  
3 permit. In determining the applicant's competence, the commission  
4 shall consider any appropriate factors, including the applicant's:

5 (1) financial ability to properly conduct the activity  
6 involved;

7 (2) environmental compliance record, including  
8 compliance with this code and any rules adopted and orders issued  
9 under this code; and

10 (3) technical competence to operate the sewer system,  
11 treatment facility, or disposal system.

12 (b) To assist the commission in determining an applicant's  
13 competence under this section, each applicant for the issuance,  
14 amendment, renewal, or transfer of a permit under this subchapter  
15 must provide to the commission the name and address of each person  
16 with an ownership interest of five percent or more in the sewer  
17 system, treatment facility, or disposal system for which the  
18 issuance, amendment, renewal, or transfer of the permit is sought.

19 (c) If a hearing is held under Section 26.028 of this code  
20 concerning the issuance, amendment, renewal, or transfer of a  
21 permit, the commission shall include in that proceeding a  
22 determination of the applicant's competence as provided by this  
23 section.

24 Sec. 26.0285. TRANSFER OF PERMIT. (a) If there is a change  
25 of control in regard to a permitted facility or the holder of a  
26 permit, the permittee must apply to the commission for an  
27 authorization to transfer the permit. Unless the transfer is

1 requested and approved within a time limit established by rule of  
2 the commission, the permit expires.

3 (b) In this section, "change of control" means a  
4 transaction, or series of transactions occurring within a one-year  
5 period, that results in a change in the persons holding 40 percent  
6 or more of:

7 (1) the voting securities of a corporation; or

8 (2) the ownership interest of another entity.

9 SECTION 6. Section 26.028(a), Water Code, is amended to read  
10 as follows:

11 (a) Except as provided in Subsections (b) and (c) of this  
12 section, notice shall be given to the persons who in the judgment  
13 of the commission may be affected by an application for a permit,  
14 permit amendment, or renewal of a permit, or for a transfer of a  
15 permit under Section 26.0285 of this code. For any application  
16 involving an average daily discharge of five million gallons or  
17 more, the notice shall be given not later than 20 days before the  
18 date on which the commission acts on the application, to each  
19 county judge in the county or counties located within 100 statute  
20 miles of the point of discharge who have requested in writing that  
21 the commission give that notice and through which water, into or  
22 adjacent to which waste or pollutants are to be discharged under  
23 the permit, flows after the discharge. The commission, on the  
24 motion of a commissioner, or on the request of the executive  
25 director or any affected person, shall hold a public hearing on the  
26 application for a permit, permit amendment, or renewal of a permit,  
27 or for a transfer of a permit under Section 26.0285 of this code.

1           SECTION 7. Subchapter B, Chapter 27, Water Code, is amended  
2 by adding Sections 27.0131 and 27.0132 to read as follows:

3           Sec. 27.0131. COMPETENCE OF APPLICANT. (a) The commission  
4 may not issue, amend, renew, or transfer a permit under this  
5 subchapter unless the commission determines that an applicant is  
6 competent to operate the injection well for which the issuance,  
7 amendment, renewal, or transfer of the permit is sought. In  
8 determining the applicant's competence, the commission shall  
9 consider any appropriate factors, including the applicant's:

10                 (1) financial ability to properly conduct the activity  
11 involved;

12                 (2) environmental compliance record, including  
13 compliance with this code and any rules adopted or orders issued  
14 under this code; and

15                 (3) technical competence to operate the injection  
16 well.

17           (b) To assist the commission in determining an applicant's  
18 competence under this section, each applicant for the issuance,  
19 amendment, renewal, or transfer of a permit under this subchapter  
20 must provide to the commission the name and address of each person  
21 with an ownership interest of five percent or more in the injection  
22 well for which the issuance, amendment, renewal, or transfer of the  
23 permit is sought.

24           (c) If a hearing is held under Section 27.018 of this code  
25 concerning the issuance, amendment, renewal, or transfer of a  
26 permit, the commission shall include in that proceeding a  
27 determination of the applicant's competence as provided by this



1 section.

2 Sec. 27.0132. TRANSFER OF PERMIT. (a) If there is a change  
3 of control in regard to a permitted facility or the holder of a  
4 permit, the permittee must apply to the commission for an  
5 authorization to transfer the permit. Unless the transfer is  
6 requested and approved within a time limit established by rule of  
7 the commission, the permit expires.

8 (b) In this section, "change of control" means a  
9 transaction, or series of transactions occurring within a one-year  
10 period, that results in a change in the persons holding 40 percent  
11 or more of:

12 (1) the voting securities of a corporation; or

13 (2) the ownership interest of another entity.

14 SECTION 8. Sections 27.018(a) and (b), Water Code, are  
15 amended to read as follows:

16 (a) If it is considered necessary and in the public  
17 interest, the commission may hold a public hearing on the  
18 application. The commission shall hold a hearing on a permit  
19 application for an injection well to dispose of industrial and  
20 municipal waste or on the application for the transfer of a permit  
21 under Section 27.0132 of this code if a hearing is requested by a  
22 local government located in the county of the proposed disposal  
23 well site or by an affected person. In this subsection, "local  
24 government" has the meaning provided for that term by Chapter 26 of  
25 this code.

26 (b) The commission by rule shall provide for giving notice  
27 of the opportunity to request a public hearing on a permit

1     application or on the application for the transfer of a permit  
2     under Section 27.0132 of this code. The rules for notice shall  
3     include provisions for giving notice to local governments and  
4     affected persons. The commission shall define "affected person" by  
5     rule.

6             SECTION 9. This Act takes effect September 1, 1991, and  
7     applies only to an application for the issuance, amendment,  
8     renewal, or transfer of a permit that is:

9             (1) submitted to the Texas Department of Health, the  
10    Texas Water Commission, or the Texas Air Control Board on or after  
11    that date; or

12            (2) pending for consideration by the Texas Department  
13    of Health, the Texas Water Commission, or the Texas Air Control  
14    Board on that date.

15            SECTION 10. The importance of this legislation and the  
16    crowded condition of the calendars in both houses create an  
17    emergency and an imperative public necessity that the  
18    constitutional rule requiring bills to be read on three several  
19    days in each house be suspended, and this rule is hereby suspended.

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relating to the competence of an applicant for the issuance, renewal, extension, amendment, or transfer of a permit by the Texas Department of Health, the Texas Water Commission, or the Texas Air Control Board.

FEB 21 1991

1. Filed with the Chief Clerk.

FEB 28 1991

2. Read first time and Referred to Committee on

ENVIRONMENTAL AFFAIRS

3. Reported favorably (as amended) (as substituted) and sent to Printer at

4. Printed and distributed at

5. Sent to Committee on Calendars at

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of years, nays, present, not voting).

7. Motion to reconsider and table the vote by which H.B. was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of years, nays, and present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of years, nays, and present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of years, nays, present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of years, nays, and present, not voting).

12. Ordered Engrossed at

13. Engrossed.

14. Returned to Chief Clerk at

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by (a viva voce vote.) ( years, nays.)

\_\_\_\_\_ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ 23. Read second time \_\_\_\_\_ passed to third reading by:  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 24. Caption ordered amended to conform to body of bill.

\_\_\_\_\_ 25. Senate and Constitutional 3-Day Rules suspended by vote of \_\_\_\_\_ yeas,  
\_\_\_\_\_ nays to place bill on third reading and final passage.

\_\_\_\_\_ 26. Read third time and passed by  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

OTHER ACTION:

OTHER ACTION:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_ 27. Returned to the House.

\_\_\_\_\_ 28. Received from the Senate (with amendments.)  
(as substituted.)

\_\_\_\_\_ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) (Substitute) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting).

\_\_\_\_\_ 30. Conference Committee Ordered.

\_\_\_\_\_ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

\_\_\_\_\_ 32. Ordered Enrolled at \_\_\_\_\_

7/6/11